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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,716	03/29/2004	Manabu Matsuyama	1122.70208	1440

7590 10/31/2007
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EXAMINER

KENDALL, CHUCK O

ART UNIT	PAPER NUMBER
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2192

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/811,716	MATSUYAMA, MANABU
	Examiner	Art Unit
	Chuck O. Kendall	2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 August 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,7-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. This is in response to Application filed 08/15/07.
2. Claims 1 – 8 have been examined.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzbee US 5,815,720 in view of

Regarding claim 1, Buzbee discloses that a method for translating a program stated in a programming language to generate a computer-executable object program using statistical information on variables (FIGURE 2, see items 31 – 38), the method comprising the steps of:

adding to a program, during the execution of the program in a first round of program translation (FIGURE 6, item 52), a sequence of instructions for performing statistical processing to record values assigned to variables in the procedure and the frequencies of assignment of the values and another sequence of instructions for

primary profile output processing to supply information stored in the record as primary profile information after the end of the execution of the program (FIGURE 6, see profile information, optimized application and all associated text);

storing the primary profile information that has been supplied into a storage unit after the end of the first round of program execution (3:20 – 25);

reading in the primary profile information and setting the values stored in the primary profile information into the record (3:10 – 15, shows storing the code in memory, also see retrieving the information 4:55 – 60);

adding to the program, in a second round of program translation, a sequence of instructions for performing statistical verification processing to record into the record the appearance frequencies of values set in the record and the execution frequency of the procedure including processing to assign the values to variables and another sequence of instructions for performing final profile output processing to supply the appearance frequencies and the execution frequency stored in the record as final profile information after the end of the execution of the program (2:29 – 35 also see FIGURE 6, 52 and all associated text); and

storing the final profile information that has been supplied into the storage unit after the end of the second round of program execution (2:35 – 45, see special version of object code).

Buzbee doesn't expressly disclose wherein assignment of values into a record in which a maximum number of values to be recorded is fixed. However in an analogous art and similar configuration Trimberger discloses a technique in which the most

commonly used instructions are measured, which runs on a fixed execution unit and is bounded by size (i.e. maximum) (15:15 – 25). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Buzbee and Trimberger because it would enable measuring the most commonly executed variables as suggested by Trimberger above.

Regarding claim 2, the method according to Claim 1, further comprising the steps of:

reading the final profile information in calculating, in a third round of program translation, the appearance frequencies of the values on the basis of the appearance frequencies of the values acquired from the final profile information and the execution frequency of the procedure including the processing to assign the values to variables and processing to achieve optimization into performing an operation predictable from the values when the appearance frequencies are 50% or more (6:65 – 7:5, see frequency profiling).

Regarding claim 3, the apparatus version of claim 1, see rationale above as previously discussed.

Regarding claim 4, the apparatus version of claim 2, see rationale above as previously discussed.

Regarding claim 7, the recording medium version of claim 1, see rationale above as previously discussed.

Regarding claim 8, the recording medium version of claim 2, see rationale above as previously discussed.

Response to Arguments

5. Applicant's arguments with respect to claims 1 - 4, and 7 - 8 have been considered but are moot in view of the new ground(s) of rejection.

Further more regarding Applicant's argument in claim 1, on page 8 of Applicant's response (08/15/07) Applicant argues that Buzbee doesn't expressly disclose ensuring correctness of a frequency of appearance to be recorded when the number of class values is larger than one of the profile records.

It appears that Applicant is arguing for limitations not present in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ensuring correctness of a frequency of appearance to be recorded when the number of class values is larger than one of the profile records.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-2723698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-2723695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ck.



TODD INGBERG
PRIMARY EXAMINER